

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BILLY WAYNE RICHMOND,

Plaintiff,

v.

PAT GLEBE, CAPTAIN CLINTON  
MAY, SERGEANT COLEMAN, KERRI  
McTARSNEY,

Defendants.

CASE NO. C13-5795 RJB/KLS

ORDER TO SHOW CAUSE OR TO  
AMEND

Before the Court for review is Plaintiff Billy Wayne Richmond's proposed civil rights complaint. ECF No. 8. Mr. Richmond has been granted leave to proceed *in forma pauperis*. ECF No. 7. The Court has determined that it will not direct service of Mr. Richmond's complaint at this time because it is deficient. However, he will be given an opportunity to file an amended complaint.

**BACKGROUND**

Mr. Richmond has filed what appear to be two civil rights complaints within one document. In the first section of his complaint, he purports to sue employees of the Stafford Creek Corrections Center (SCCC), where Mr. Richmond was previously housed, including SCCC's Superintendent Pat Glebe, Capt. Clinton May, SCCC Property Room Sergeant Coleman, and SCCC Grievance Coordinator Kerri McTarsney. ECF No. 8, p. 1. Mr. Richmond alleges that the SCCC property room is holding his personal property including law books and a

1 Zenith “color bubble type” television set. ECF No. 8, p. 3. Separately filed attachments reflect  
2 that Mr. Richmond received a notice indicating that he had 90 days to pay \$30.00 to have his  
3 property mailed to him and if the amount is not paid within 90 days the property could be  
4 donated or destroyed. The attachment also reflects that Mr. Richmond filed a tort claim seeking  
5 damages for the loss of personal property with the Washington State Office of Risk Management  
6 on September 11, 2013. *Id.* Mr. Richmond seeks an order directing the return of his property.  
7 *Id.*, p. 4.

8 In a separate section attached to his complaint, but also entitled as a civil rights  
9 complaint, Mr. Richmond purports to sue the same parties. However, it is not clear whether by  
10 this filing he intended to pursue additional causes of action or to merely provide an explanatory  
11 background for the claims raised in the first section of his complaint. The narrative included in  
12 this section is rambling, confusing, and hard to follow. In the first three pages, Mr. Richmond  
13 provides a history of his incarceration since 1996. He also states generally here that up until  
14 2011, all institutions where he had been housed had “complied with the Washington state  
15 Constitution’s laws and policies.” ECF No. 8, pp. 5-8.

16 Mr. Richmond then complains that he was discriminated against by unknown “Caucasian  
17 women” when they refused to give him a job as a janitor because he is a Black man. He also  
18 alleges, however, that Captain Clint May, who is named as a defendant, spoke to the SCCC  
19 kitchen food manager on his behalf and he was hired. *Id.*, p. 8.

20 Mr. Richmond states that because of his “job inputs,” “certain females committee sources  
21 at SCCC” are retaliating against him. He also claims that when he grieved a missing CD player,  
22 Grievance Coordinator K. McTarsney infringed him for allegedly threatening her in his  
23 grievances. As a result, he spent thirty-three days in segregation. *Id.*, p. 9. It is unclear whether  
24

1 Mr. Richmond intended his allegation against Ms. McTarsney as part of his retaliation claim or  
2 whether he is attempting to assert a separate claim relating to his disciplinary segregation.

3 At the end of this section of the proposed complaint, Mr. Richmond again raises his claim  
4 that the SCCC property room will not ship his property without payment. In the relief section of  
5 this portion of his proposed complaint, Mr. Richmond seeks only the return of his personal  
6 property. *Id.*, p. 11.

## 7 DISCUSSION

8 The Court declines to serve the complaint because it contains fatal deficiencies that, if not  
9 addressed, might lead to a recommendation of dismissal of the entire action for failure to state a  
10 claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(b)(ii), 1915A(b)(1).

11 Mr. Richmond's complaint is brought under § 1983. To state a claim under § 1983,  
12 a plaintiff must allege facts showing (1) the conduct about which he complains was committed  
13 by a person acting under the color of state law; and (2) the conduct deprived him of a federal  
14 constitutional or statutory right. *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). In  
15 addition, to state a valid § 1983 claim, a plaintiff must allege that he suffered a specific injury as  
16 a result of the conduct of a particular defendant, and he must allege an affirmative link between  
17 the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

### 18 A. Personal Property

19 Plaintiff claims that his personal property is being wrongfully withheld. The Fourteenth  
20 Amendment provides, "[n]o State shall ... deprive any person of life, liberty, or property, without  
21 due process of law." U.S. CONST. amend. XIV, § 1. The Constitution's due process guarantee  
22 generally "requires some kind of hearing before the State deprives a person of liberty or  
23 property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). However, when a prisoner alleges an  
24 intentional or negligent deprivation of his property by an unauthorized action of a prison official,

1 there is no violation of procedural due process if the state provides an adequate post-deprivation  
2 remedy. *Hudson v. Palmer*, 468 U.S. 517, 468 (1984) (intentional deprivations of property);  
3 *Parratt v. Taylor*, 451 U.S. 527, 537 (1981) (negligent deprivations of property). This is because  
4 “when deprivations of property are effected through random and unauthorized conduct of a state  
5 employee, pre-deprivation procedures are simply ‘impracticable’ since the state cannot know  
6 when such deprivations will occur.” *Hudson*, 468 U.S. at 533. On the other hand, when the  
7 deprivation occurs pursuant to “state law, regulation, or institutionalized practice, it is neither  
8 random nor unauthorized, but wholly predictable, authorized, and within the power of the state to  
9 control,” and the justifications for post-deprivation remedies does not apply and the normal pre-  
10 deprivation hearing is required to satisfy due process. *Haygood v. Younger*, 769 F.2d 1350,1357  
11 (9th Cir.1985) ( en banc ), *cert. denied*, 478 U.S. 1020 (1986) (citing *Logan v. Zimmerman Brush*  
12 *Co.*, 455 U.S. 422, 436 (1982)); *see also Zimmerman v. City of Oakland*, 255 F.3d 734, 737–38  
13 (9th Cir.2001).

14 Under Washington law, Mr. Richmond may file a tort claim and a civil action against the  
15 state of Washington for the unlawful loss or destruction of his personal property. RCW  
16 72.02.045 (state and/or state officials liable for the negligent or intentional loss of inmate  
17 property); RCW 4.92.090-.100 (state liable for the tortious conduct of state officials and  
18 employees); *see also Jeffries v. Reed*, 631 F. Supp. 1212, 1216 (E.D. Wa. 1986) (state of  
19 Washington provides a meaningful remedy for the loss of an inmate’s property by state  
20 officials). In fact, attachments subsequently filed by Mr. Richmond reflect that he has availed  
21 himself of state law remedies by filing a tort claim with the state. ECF No. 6. Because the state  
22 of Washington provides a meaningful remedy for the loss of his personal property, Mr.  
23 Richmond’s claim that his federal due process rights have been violated must be dismissed.  
24

1 **B. Racial Discrimination**

2 Mr. Richmond also claims that he was discriminated against when he sought employment  
3 as a janitor at SCCC. However, he also claims that Captain May, who he names as a defendant,  
4 helped him to get a job in the SCCC kitchen.

5 Equal protection claims arise when a charge is made that similarly situated individuals  
6 are treated differently without a rational relationship to a legitimate state purpose. *See San*  
7 *Antonio School District v. Rodriguez*, 411 U.S. 1 (1972). “To state a claim under 42 U.S.C. §  
8 1983 for violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must  
9 show that the defendants acted with an intent or purpose to discriminate against the plaintiff  
10 based upon membership in a protected class.” *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th  
11 Cir.2001) (*quoting Barren v. Harrington*, 152 F.3d 194, 1194 (9th Cir.1998)). Prisoners are  
12 protected from invidious discrimination based on race. *See Wolff v. McDonnell*, 418 U.S. 539,  
13 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

14 Mr. Richmond has failed to allege a claim of intentional or purposeful discrimination. He  
15 alleges only that the unnamed “female caucasians” who assigned jobs refused “to give a Black  
16 Man a job.” ECF No. 8, p. 8. If Mr. Richmond wishes to pursue this claim, he must name the  
17 persons he claimed discriminated against him and allege the facts and circumstances surrounding  
18 the alleged discrimination. It is not sufficient to simply allege that he was denied something he  
19 desired because he is of one color and the person denying his request is of another color.

20 **C. Retaliation**

21 Mr. Richmond also claims that “certain females committee sources at SCCC have been  
22 grudging and retaliating against him for [his] job inputs.” ECF No. 8, p. 8. This vague  
23 allegation does not state a claim for retaliation.  
24

1 “A prisoner suing prison officials under 1983 for retaliation must allege that he was  
 2 retaliated against for exercising his constitutional rights and that the retaliatory action does not  
 3 advance legitimate penological goals, such as preserving institutional order and discipline.”  
 4 *Barnett v. Centoni*, 31 F.3d 813, 815–16 (9th Cir.1994) (per curiam) (citing *Rizzo v. Dawson*,  
 5 778 F.2d 527, 532 (9th Cir.1985)). These claims must be evaluated in the light of the deference  
 6 that must be accorded to prison officials. See *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir.1995).  
 7 The prisoner must establish a link between the exercise of constitutional rights and the allegedly  
 8 retaliatory action. *Id.* Finally, the prisoner must demonstrate that his first amendment rights were  
 9 actually chilled by the alleged retaliatory action. See *Resnick v. Hayes*, 213 F.3d 443, 449 (9th  
 10 Cir.2000).

11 Here, Mr. Richmond does not allege that he was engaged in a constitutional activity, does  
 12 not describe what was done in retaliation, does not name who retaliated against him, and does  
 13 not allege that his first amendment rights were actually chilled by the retaliatory action.

#### 14 **D. Segregation**

15 To the extent Mr. Richmond is attempting to state a claim relating to his disciplinary  
 16 segregation, he is advised that in the context of prison disciplinary actions resulting in  
 17 administrative segregation, due process is only required when the segregation presents a type of  
 18 atypical, significant deprivation, in relation to the ordinary incidents of prison life. *Sandin v.*  
 19 *Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Facts to consider in  
 20 determining whether a prisoner’s segregation is atypical and significant include: 1) whether the  
 21 challenged condition mirrored those conditions imposed upon inmates in administrative  
 22 segregation and protective custody and thus comported with the prison’s discretionary authority;  
 23 2) the duration of the condition, and the degree of restraint imposed; and 3) whether the state’s  
 24

1 action will invariably affect the duration of the prisoner's sentence. *Ramirez v. Galaza*, 334 F.3d  
2 850, 860–861 (9th Cir.2003) (*quoting Sandin*, 515 U.S. at 486–87 and *Keenan*, 83 F.3d at 1089).

3 Mr. Richmond fails to allege how his placement in segregation imposed an “atypical and  
4 significant hardship” when compared to “the ordinary incidents of prison life.” *Sandin* at 484.

5 Based on these allegations, Plaintiff has failed to state a viable claim under 42 U.S.C. §  
6 1983. The Court will grant Plaintiff an opportunity to file an amended complaint so that he may  
7 attempt to cure his deficient complaint. Plaintiff must clarify whether he has any basis for  
8 pursuing a claim under § 1983. In the amended complaint, Plaintiff must write out short, plain  
9 statements telling the Court: (1) the constitutional right he believes was violated; (2) name of the  
10 person who violated the right; (3) exactly what that individual did or failed to do; (4) how the  
11 action or inaction of that person is connected to the violation of Plaintiff's constitutional rights;  
12 and (5) what specific injury Plaintiff suffered because of that person's conduct. See *Rizzo v.*  
13 *Goode*, 423 U.S. 362, 371–72, 377, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). If the person named as  
14 a defendant was a supervisory official, Plaintiff must either state that the defendant personally  
15 participated in the constitutional deprivation (and tell the Court the five things listed above), or  
16 Plaintiff must state, if he can do so in good faith, that the defendant was aware of the similar  
17 widespread abuses, but with deliberate indifference to Plaintiff's constitutional rights, failed to  
18 take action to prevent further harm to Plaintiff and also state facts to support this claim. See  
19 *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691, 98 S.Ct. 2018, 56  
20 L.Ed.2d 611 (1978).

21 As noted above, Plaintiff may file an amended complaint to cure the deficiencies noted  
22 herein. Plaintiff shall present his complaint on the form provided by the Court. The amended  
23 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a  
24 copy, it should contain the same case number, and it may not incorporate any part of the original

1 | complaint by reference. An amended complaint operates as a complete substitute for (rather than  
2 | a mere supplement to) the present complaint. Plaintiff should complete all sections of the  
3 | Court's form. Plaintiff may attach continuation pages as needed but may not attach a separate  
4 | document that purports to be his amended complaint. The Court will screen the amended  
5 | complaint to determine whether it contains factual allegations linking each defendant to the  
6 | alleged violations of Plaintiff's rights. The Court will not authorize service of the amended  
7 | complaint on any defendant who is not specifically linked to the violation of Plaintiff's rights.

8 |       If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned  
9 | that if the amended complaint is not timely filed or if he fails to adequately address the issues  
10 | raised herein on or before **October 31, 2013**, the Court will recommend dismissal of this action  
11 | as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike" under 28  
12 | U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
13 | brings three or more civil actions or appeals which are dismissed on grounds they are legally  
14 | frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil  
15 | action or appeal in forma pauperis "unless the prisoner is under imminent danger of serious  
16 | physical injury." 28 U.S.C. § 1915(g).

17 |       **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**  
18 | **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**  
19 | **this Order and a copy of the General Order to Plaintiff.**

20 |       **DATED** this 3rd day of October, 2013.

21 |   
22 | Karen L. Strombom  
23 | United States Magistrate Judge  
24 |